

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTHERNNET, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE LONG DISTANCE)
TELECOMMUNICATIONS SERVICES, INCLUDING) CASE NO. 89-134
OPERATOR-ASSISTED SERVICES, STATEWIDE)
AS A WATS RESELLER WITHIN THE COMMON-)
WEALTH OF KENTUCKY)

O R D E R

On May 18, 1989, SouthernNet, Inc. ("SouthernNet") filed its application with the Commission seeking a Certificate of Public Convenience and Necessity to provide statewide long distance telecommunications services, including operator-assisted services, as a WATS¹ reseller within the Commonwealth of Kentucky.

The Commission ordered SouthernNet to file additional information by Orders dated July 10, 1989, August 21, 1989, and September 18, 1989. SouthernNet filed its responses on August 7, 1989, September 6, 1989, and October 2, 1989, respectively. Also, SouthernNet filed a motion for confidentiality for portions of its response to the July 10, 1989 Order. The issue of confidentiality has been addressed in the November 22, 1989 Order of this Commission.

On June 13, 1989, AT&T Communications of the South Central States, Inc. ("AT&T") filed a motion for full intervention in this proceeding. The Commission granted this motion on June 28, 1989.

¹ Wide Area Telecommunications Service.

At the request of SouthernNet an informal conference was held on September 23, 1989. The participants were SouthernNet, AT&T, and the Commission Staff. In this conference, SouthernNet discussed and answered questions about the structure of its parent company and affiliates.

On October 6, 1989, AT&T filed comments concerning SouthernNet's certification as a facilities-based carrier or as a WATS reseller.

On October 12, 1989, MCI Telecommunications Corporation and South Central Bell Telephone Company filed motions for full intervention in this proceeding. The Commission granted these motions on November 8, 1989.

On October 16, 1989, SouthernNet filed an updated response to the Commission's previous data requests. It also filed updated pages for its proposed tariff.

DISCUSSION

AT&T raised concerns over the appropriateness of SouthernNet being certificated as a WATS reseller while it has affiliates which are facilities-based carriers. The Commission has already permitted some carriers, under certain conditions, to operate as WATS resellers even though they had affiliates which owned transmission facilities.

In Case No. 9830,² the Commission certificated Long Distance Telephone Savers, Inc. ("LDTS") as a WATS reseller even though it

² Case No. 9830, The Application of Long Distance Telephone Savers, Inc. for a Certificate of Public Convenience and Necessity to Provide Resale of Telecommunications Services and Operation of Facilities Within Kentucky.

was a wholly-owned subsidiary of a common carrier which owns transmission facilities and provides switched long distance services. LDTS did not own transmission facilities. Pursuant to the Commission's Order, LDTS was required to transport all calls via transmission facilities leased from certificated carriers under appropriate tariffs. If LDTS were to use the transmission facilities of an affiliate, the affiliate would have to first be granted a Certificate of Public Convenience and Necessity by the Commission to provide interLATA telecommunications services to the public and be required to file tariffs. The affiliate would then be regulated by the Commission and required to make its transmission facilities available to other WATS resellers at its tariffed rates. The Commission put LDTS on notice that if it decided to construct transmission facilities in the future, its certificate to resell WATS would be revoked. LDTS would then be required to seek a new certificate from the Commission as a facilities-based carrier.

Similarly, in Case No. 9066,³ Cincinnati Bell Long Distance, Inc. ("CBLD") was certificated as a WATS reseller even though it was an affiliate of a telecommunications company that owned transmission facilities. CBLD did not have any facilities of its

³ Case No. 9066, The Application of Cincinnati Bell Long Distance, Inc., 125 E. Court Street, 10th floor, Cincinnati, Ohio 45202, for a Certificate of Public Convenience and Necessity to Provide Intrastate Toll Telephone Service Within the Commonwealth of Kentucky.

own. Its affiliate is a jurisdictional utility and offers its transmission facilities to other resellers under tariff and at the rates that it charges CBLD. Therefore, having an affiliate which owns transmission facilities, by itself, is insufficient to deny a carrier's request to be a WATS reseller.

Although SouthernNet is seeking intraLATA operating authority, the Commission has permitted intraLATA competition only through the resale of WATS. There is no evidence that SouthernNet will use WATS to provide intraLATA services. Furthermore, SouthernNet's choice of switching location appears to make it impossible to use intrastate WATS as the sole transport for intraLATA services. The Commission recently experienced a similar situation in Case No. 89-017⁴ and eventually granted LDD, Inc. ("LDD") a temporary exemption. The Commission permitted LDD to delay the installation of a switch in Kentucky pending a decision in Administrative Case No. 323.⁵ In Administrative Case No. 323, the Commission is investigating the issue of whether or not it is in the public interest to allow some degree of facilities-based intraLATA competition. If the Commission determines that such

⁴ Case No. 89-017, The Application of LDD, Inc. For The Issuance of A Certificate of Public Convenience and Necessity To Operate As A Reseller of Telecommunications Services Within The Commonwealth of Kentucky; The Application of DCI, Inc. For the Issuance of A Certificate of Public Convenience and Necessity To Provide Intrastate, InterLATA Telecommunications Services To The Public As A Facilities-Based, Non-Dominant InterLATA Carrier.

⁵ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

competition is in the public interest, then it is possible that there would be little distinction between resellers and facilities-based carriers. In that event, LDD or any other similar carrier would have unnecessarily made significant investment in switching equipment.

Furthermore, LDD was required to originate all intraLATA calls on local exchange companies' switched access services and terminate via local exchange companies' WATS. LDD was also required to keep records reflecting that its intraLATA traffic volumes reasonably correspond to its purchase of local exchange companies' services.

SouthernNet's case is similar to LDD's. Therefore, the Commission will grant a similar exemption to SouthernNet if it agrees to the same conditions required of LDD.

OPERATOR SERVICES ISSUE

The Commission established Administrative Case No. 330⁶ to address the restrictions and guidelines for the provision of operator-assisted services by all non-local exchange companies. The non-local exchange companies were given 30 days from the date of the Order to provide evidence or testimony why they should not have to comply with the restrictions and conditions of service contained in the Order and to request a public hearing.

⁶ Administrative Case No. 330, Policy And Procedures in the Provision of Operator-Assisted Telecommunications Services.

SouthernNet, in its October 2, 1989 response, requested an exemption from the requirement to give a caller another carrier's identification code if requested by the caller.

SouthernNet, in its August 7, 1989 response, contended that as SouthernNet is a subsidiary of Telecom*USA, Inc., it would identify itself as "Telecom*USA" in its operator-assisted services.

The Commission, having considered the application of SouthernNet, the information provided by SouthernNet in response to the Commission's Orders, and being otherwise sufficiently advised, finds that:

1. SouthernNet should be authorized to provide statewide telecommunications services as a WATS reseller on an interim basis, pending the outcome of Administrative Case No. 323, and contingent upon SouthernNet's compliance with originating intraLATA calls only on local exchange companies' switched access services and terminating such calls using only local exchange companies' WATS.

2. SouthernNet should maintain records reflecting that its intraLATA traffic volumes reasonably correspond to its purchase of local exchange companies' services.

3. SouthernNet should be authorized to provide interLATA operator-assisted services subject to all guidelines, requirements, restrictions, and conditions of service addressed in Administrative Case No. 330.

4. SouthernNet's request for exemption from the requirement to provide other carriers' identification codes should be granted pursuant to the January 15, 1990 Order in Administrative Case No. 330.

5. In its interLATA operator-assisted services, SouthernNet should include "SouthernNet" in its identification to end-users.

IT IS THEREFORE ORDERED that:

1. SouthernNet be and it hereby is granted authority to provide statewide telecommunications services as a WATS reseller on an interim basis, pending the outcome of Administrative Case No. 323, and contingent upon SouthernNet's compliance with originating intraLATA traffic only on local exchange companies' switched access services and terminating such traffic using only local exchange companies' WATS.

2. SouthernNet shall file a statement within 20 days from the date of this Order stating that it can and will comply with the above conditions of a WATS reseller, including that it will provide intraLATA services by originating such traffic on local exchange companies' access services and terminating intraLATA traffic using local exchange companies' WATS.

3. If SouthernNet is unable to comply with ordering paragraphs 1 and 2, it shall file tariffs reflecting only interLATA operating authority within 30 days from the date of this Order.

4. Upon a decision in Administrative Case No. 323, SouthernNet shall file evidence demonstrating its service configuration is consistent with the Commission's policies.

5. SouthernNet be and it hereby is granted authority to provide interLATA operator-assisted services subject to all guidelines, requirements, restrictions, and conditions of service addressed in the September 8, 1989 and January 15, 1990 Orders in Administrative Case No. 330. These requirements are:

a. Operator-assisted services shall be subject to rate regulation and rates shall not exceed AT&T's maximum approved rates. "Maximum approved rates" is defined as the rates approved by this Commission in AT&T's most recent rate proceeding for measured toll service applicable to operator-assisted calls, as well as the additional charges for operator assistance. SouthernNet is not permitted to include any other surcharge or to bill for uncompleted calls. Time-of-day discounts shall also be applicable. SouthernNet is also required to rate calls using the same basis that AT&T uses to rate calls, i.e., distance calculations based on points-of-call origination and termination, definitions of chargeable times, billing unit increments, rounding of fractional units, and minimum usages. In Case No. 9889,⁷ the Commission allowed AT&T a limited amount of rate flexibility in that it was allowed to reduce certain rates up to a maximum of 10 percent without filing the full cost support normally required in a rate proceeding. SouthernNet is not required to match AT&T's rate reductions resulting from this rate flexibility. However,

⁷ Case No. 9889, Adjustment of Rates of AT&T Communications of the South Central States, Inc.

when there is any change in AT&T's maximum approved rates, SouthernNet shall file tariffs necessary to comply with the requirements herein within 30 days from the effective date of AT&T's rate change.

b. Except as otherwise indicated in this Order, SouthernNet shall be subject to regulation as delineated in the May 25, 1984 and October 26, 1984 Orders in Administrative Case No. 273,⁸ as well as any subsequent modifications to non-dominant carrier regulations. In the event of conflict, the terms of the instant Order shall take precedence, unless SouthernNet is specifically relieved from compliance with any conditions contained herein.

c. Access to the operator services of competing carriers shall not be blocked or intercepted; however, this requirement does not pertain to situations where the customers who have control of premises equipment are also the users and bill-payers of the services.

d. Access to the local exchange companies' operators shall not be blocked or otherwise intercepted by traffic aggregators. Specifically, all "0 minus"⁹ calls shall be directed

⁸ Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

⁹ A "0 minus" or "0-" call occurs when an end-user dials zero without any following digits.

to the local exchange companies' operators. In equal access areas, "0 plus"¹⁰ intraLATA calls shall not be intercepted or blocked. In non-equal access areas, SouthernNet is prohibited from blocking or intercepting "0 minus" calls; however, it is permissible to intercept "0 plus" calls.

e. Blocking and interception prohibitions shall be included in tariffs and contracts by stating that violators will be subject to immediate termination of service after 20 days notice to the owners of non-complying customer premises equipment.

f. SouthernNet shall provide tent cards and stickers to be placed near or on telephone equipment provided by traffic aggregators to be used to access its services and shall include provisions in tariffs and contracts that subject violators to termination of service.

g. Operators shall be required to identify the carrier, making reference to "SouthernNet," at least once during every call before any charges are incurred.

h. Operators shall provide an indication of SouthernNet's rates to any caller upon request.

i. SouthernNet shall not accept calling cards for billing purposes if it is unable to validate the card.

6. SouthernNet shall keep records reflecting that its intraLATA traffic volumes reasonably correspond to its purchase of local exchange companies' services.

¹⁰ A "0 plus" or "0+" call occurs when an end-user dials zero and then dials the digits of the called telephone number.

7. This authority to provide service is strictly limited to those services described in this Order, SouthernNet's application, and the conditions described above.

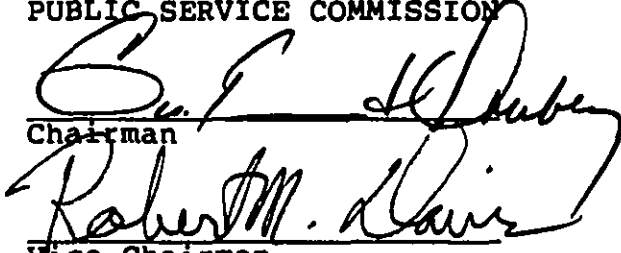
8. SouthernNet shall comply with the Commission decisions in Administrative Case Nos. 323 and 328,¹¹ now pending, that may apply to SouthernNet's Kentucky operations.

9. SouthernNet shall comply with any further Orders in Administrative Case No. 330.

10. Within 30 days from the date of this Order, SouthernNet shall file its tariff sheets in accordance with 807 KAR 5:011 to conform to the restrictions and conditions of service contained herein.

Done at Frankfort, Kentucky, this 26th day of March, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director

¹¹ Administrative Case No. 328, Investigation Into Whether Resellers Should be Included in the ULAS Allocation Process.